

1 STATE OF FLORIDA
 2 STATE RETIREMENT COMMISSION
 3 CASE NO. 08-13612-JAX
 4 CLOVIS WATSON, JR.,
 5 Petitioner,
 6 Vs.
 7 DEPARTMENT OF MANAGEMENT
 8 SERVICES,
 9 Respondent.
 10 _____/
 11
 12 VOLUME II OF II
 13 TRANSCRIPT OF PROCEEDINGS
 14 DATE TAKEN: May 19, 2009
 15 TIME: 1:37 to 6:06 p.m.
 16 PLACE: Department of Management Services
 4050 Esplanade Way
 Tallahassee, Florida 32399
 17
 18 BEFORE: STATE RETIREMENT COMMISSION
 19 This cause came on to be heard at the time and
 place aforesaid, when and where the following
 proceedings were reported by:
 20
 21 Reported by:
 22 AUDRA M. SMITH, RPR, Court Reporter
 For the Record Reporting, Inc.
 23 1500 Mahan Drive - Suite 140
 Tallahassee, Florida, 32308
 24
 25

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1 A P P E A R A N C E S
 2 STATE RETIREMENT COMMISSIONERS:
 3 ALICE MYERS, Chair
 4 ERNEST DOSTER, Commissioner
 5 MILLIE SEAY, Commissioner
 6 REPRESENTING THE STATE RETIREMENT COMMISSION:
 7 ANN COCHEU, Legal Adviser
 LEE ANN GUSTAFSON, Legal Adviser
 8 APPEARANCES OF COUNSEL:
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 13 ON BEHALF OF THE RESPONDENT DMS:
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 17 ON BEHALF OF THE CITY OF ALACHUA:
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 21 Also Present: Brandi Tanton, Clerk for the State
 Retirement Commission; Clovis Watson, Jr.; and Joyce
 22 Morgan
 23 * * *
 24
 25

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1 P R O C E E D I N G S
 2 CHAIRPERSON MYERS: Ready?
 3 MR. SMITH: I call Joel DeCoursey. He's been
 previously sworn.
 4
 5 * * * * *
 6 Whereupon,
 7 JOEL DeCOURSEY
 8 was called as a witness, having been first duly sworn to
 9 speak the truth, the whole truth and nothing but the
 10 truth, was examined and testified as follows:
 11 DIRECT EXAMINATION
 12 BY MR. SMITH:
 13 Q. State your full name, please.
 14 A. Joel DeCoursey, Jr.
 15 Q. And spell your last name, please.
 16 A. D-e-C-o-u-r-s-e-y.
 17 MS. STEVENS: I'm sorry, Mr. Smith and
 18 Commissioners, I would just like to get on the
 19 record I do object to the testimony of this
 20 witness. I don't know what he can testify to that
 21 has any bearing on Mr. Watson's Special Risk Class
 22 membership. He can only testify, as I said, to his
 23 affidavits and duties. We have his affidavit. It
 24 can only talk about his duties.
 25 Under the law, the duties as a city manager

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1 have absolutely nothing to do with Special Risk
2 Class membership.

3 MR. SMITH: I agree you have his affidavit. I
4 didn't know his affidavit was in evidence. If it's
5 in evidence, I'll accept that as his testimony with
6 very little to add to it.

7 I just have a few questions of him that I
8 think are germane, and I disagree with the idea
9 that his duties are unrelated to whether or not
10 he's Special Risk. I think that's a legal argument
11 that we'll make here and elsewhere, but I disagree
12 with it.

13 CHAIRPERSON MYERS: Let's not prolong it,
14 okay? You have a couple questions: Ask and
15 answer, and we'll see if anybody else has any
16 questions.

17 MR. SMITH: Is it your decision the affidavit
18 is in evidence?

19 CHAIRPERSON MYERS: Yes.

20 MR. SMITH: So we will accept that as
21 testimony?

22 CHAIRPERSON MYERS: Right.

23 BY MR. SMITH:

24 Q. Okay. Just by -- I think I just asked you
25 you've already filed your affidavit. Do you remain the

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1 briefly would you tell this Commission -- I know you now
2 wear a whole bunch of stars, and I know that at ASO you
3 had less stars but more bars.

4 But my question for you now is, now that you
5 carry that austere and high rank title of Chief, what
6 are the duties you're involved in every day?

7 A. Just as any other normal law enforcement
8 officer. Duties to include crossing guard, following
9 the back-up, and on-calls.

10 Q. Still write tickets?

11 A. Still make traffic stops, haven't written a
12 ticket, but do conduct traffic stops.

13 Q. Do you do all the duties that are required as
14 a small town police department?

15 A. Yes, sir.

16 MR. SMITH: I have nothing further.

17 CHAIRPERSON MYERS: Do you have anything?

18 CROSS-EXAMINATION

19 BY MS. STEVENS:

20 Q. Mr. DeCoursey, when were you hired?

21 A. I was hired in July 31 officially of last
22 year, but I came on as interim in May of last year.

23 Q. Were you employed with the City in any
24 capacity before you were the deputy -- excuse me the
25 Police Chief?

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1 Chief since the time you filed your affidavit?

2 A. Yes, I do.

3 Q. Now, as it relates to the time that you have
4 been at the City of Alachua, prior to that time, were
5 you in law enforcement?

6 A. Yes, I was.

7 Q. Prior to that time, were you informed as to
8 matters relating to the City of Alachua?

9 A. Yes, I was.

10 Q. Where does your family live?

11 A. City of Alachua.

12 Q. And I know you're in -- you have a number of
13 extended family members in law enforcement in the
14 community?

15 A. That's correct.

16 Q. Chief, during the time that you have been
17 there and remaining to date, the information you gave in
18 your affidavit regarding his involvement in every phase
19 of law enforcement in the Department, does that still
20 remain true?

21 A. Yes, it is.

22 Q. How frequently do you meet with him regarding
23 operational decisions in that Department?

24 A. Daily.

25 Q. And backing up to your own duties, very

1 A. I was a law enforcement officer 20 years ago
2 at the Department.

3 Q. For 20 years, you were not employed with the
4 City?

5 A. That's correct.

6 MS. STEVENS: Thank you.

7 CHAIRPERSON MYERS: Mr. Doster, do you have
8 any questions?

9 COMMISSIONER DOSTER: No.

10 CHAIRPERSON MYERS: Ms. Seay?

11 EXAMINATION

12 BY COMMISSIONER SEAY:

13 Q. So you are Police Chief as of July of last
14 year?

15 A. Yes, ma'am. July 31 officially. I came on as
16 Interim Chief in May of last year.

17 Q. What happened to the Chief that was there
18 prior to you?

19 A. He retired.

20 Q. He retired?

21 A. Yes, ma'am.

22 Q. Okay. And in your job as Police Chief, what
23 kind of interaction -- you said you had daily
24 interaction?

25 A. Either e-mail, telephone, or just

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1 correspondence. Just basically talking about operations
2 of the agency.

3 Q. So police talk stuff?

4 A. Yes, ma'am. The day-to-day operation,
5 personnel issues, and so forth.

6 COMMISSIONER SEAY: Okay. That's all I have.
7 CHAIRPERSON MYERS: I don't have any
8 questions.

9 REDIRECT EXAMINATION

10 BY MR. SMITH:

11 Q. One question in follow-up. You said you were
12 over at ASO for 20 years, you left APD, you went to ASO?

13 A. ASO 18 years, but 20 years I was at the
14 Alachua Police Department prior -- after I left APD.

15 Q. Do you know Chief Jernigan?

16 A. Yes.

17 Q. Do you know Mr. Watson?

18 A. Yes.

19 Q. When you were with the Alachua Sheriff's
20 Office, did it provide services in the Alachua area?

21 A. Yes, it did.

22 Q. Did you work closely with the Department on
23 regular occasions when you were at ASO?

24 A. Yes.

25 Q. The duties that you now perform, are those the

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1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q. Ms. Burgess, you've been previously sworn.

5 A. Yes, I have.

6 Q. State your name, please.

7 A. Bonnie K. Burgess.

8 Q. Ms. Burgess, where do you live?

9 A. Alachua, Florida.

10 Q. How long have you lived there?

11 A. You want me to give my age? All my life.

12 Q. All your life. All your life has become a
13 real popular answer.

14 Ms. Burgess, do you hold a position in the
15 City of Alachua?

16 A. Yes.

17 Q. What is that?

18 A. Currently I'm the Mayor of the City of
19 Alachua. Mayor slash City Commissioner.

20 Q. Have you previously held the position of Mayor
21 slash City Commissioner?

22 A. Yes.

23 Q. Did you hold that position in 2002?

24 A. I did.

25 Q. And without going into great deal, the mayor

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1 duties you know to be the duties Robert Jernigan
2 performed before you?

3 CHAIRPERSON MYERS: Mr. Smith, you had your
4 chance with him.

5 MR. SMITH: Well, ma'am, I got to be honest
6 with you, she brought up the question he's gone for
7 20 years. The implication is he didn't know what
8 was going on.

9 CHAIRPERSON MYERS: I don't think that at all
10 since he was -- he was -- he testified he's lived
11 there, he's had many relatives in law enforcement.
12 I think they got the picture.

13 MR. SMITH: I just want to make sure.
14 Thank you.

15 THE WITNESS: You're welcome.

16 CHAIRPERSON MYERS: You can stay or go. It's
17 up to you.

18 (The witness was excused.)

19 MR. SMITH: This will be my last witness.
20 Bonnie Burgess.

21 * * * * *

22 Whereupon,

23 BONNIE BURGESS

24 was called as a witness, having been first duly sworn to
25 speak the truth, the whole truth and nothing but the

1 is just one other vote, although you do do some duties,
2 it's a five-man commission, you run the meetings?

3 A. That's correct.

4 Q. In 2002, were you aware that the City of
5 Alachua brought Clovis Watson in -- first as an Interim
6 City Manager and then as City Manager/Police
7 Commissioner?

8 A. Very much aware, yes, sir.

9 Q. Were you, in fact -- are you the signatory on
10 those contracts and did you talk with -- were you at the
11 meetings when he was appointed to those positions?

12 A. Yes, sir, I was.

13 Q. And was the City's understanding from
14 Mr. Watson -- from the outset -- that Mr. Watson would
15 remain certified as a police officer; that he would
16 remain eligible to go back into the police department;
17 and that he would not take the position of the City

18 Manager if it was going to cost him his retirement?

19 A. I was in full understanding of that, yes, sir,
20 I was.

21 Q. Did he state that to the Commission?

22 A. Yes.

23 Q. Is that what led to those contracts?

24 A. That's what led to those contracts,
25 absolutely.

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1 MR. SMITH: I have nothing further.

2 CROSS-EXAMINATION

3 BY MS. STEVENS:

4 Q. I've got a quick question for you.

5 A. Sure.

6 Q. I'm Elizabeth Stevens. I represent the
7 Division. Even though you were well aware of Mr. Watson
8 only accepting the position if he was entitled to
9 continuing the Special Risk Retirement coverage, you
10 never contacted the Division to actually see if he would
11 be able to do that, did you?

12 A. Personally, no, ma'am, I did not.

13 Q. Do you know of anyone at the City that ever
14 contacted the Division to actually see if he would still
15 be eligible for Special Risk coverage in the retirement
16 system?

17 A. Can you say that again, please?

18 Q. Do you know of anyone in the City that
19 contacted the Division to ask us whether he would
20 actually be able to remain in Special Risk?

21 A. No.

22 Q. Mr. Smith ran for Governor, didn't he?

23 MR. SMITH: Not very well, but yeah.

24 BY MS. STEVENS:

25 Q. Weren't you involved in his election campaign

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1 contractual relationship? What gave you the impression
2 that you could enter into that contract?

3 A. What gave us the authority to think that we
4 could do that?

5 Q. Yeah. That you felt like you --

6 A. When we made the agreement that the high risk
7 -- because in any two weeks that he comes in, he could
8 be sent back to the police department, and that's --
9 that was my understanding. When he came, well, he may
10 or may not like being a city manager. We may at any
11 given two weeks' time, every time we come in as a
12 Commission, he may be -- it may not work out, and he may
13 be sent back to his high risk as a police officer in the
14 City of Alachua; so that was -- that was the
15 understanding, and that's the contract that I signed.

16 Q. Why wouldn't you just assume that he'd go back
17 into Special Risk at that point? You're saying you
18 wanted to guarantee he could go back to his old job. It
19 seems like there was a disconnect that he could be the
20 city manager, but we'll guarantee you can have your old
21 job back. That's the agreement. So why wouldn't that
22 also apply to Special Risk that he would have gone back
23 to that?

24 A. That's a very good question. I thought that
25 was one of the things that we're here to try to

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1 in Alachua?

2 A. What do you consider involved? Yeah, he's
3 from Alachua.

4 Q. Were you on his committee?

5 A. Possibly.

6 MS. STEVENS: Thank you. No further
7 questions.

8 CHAIRPERSON MYERS: Mr. Doster, do you have
9 any questions?

10 EXAMINATION

11 BY COMMISSIONER DOSTER:

12 Q. I presume there were five of you on the
13 Commission, none of you pursued the question that she
14 has raised about the retirement; is that correct?

15 A. That's correct.

16 Q. You just took what -- you just took what the
17 City itself was making an agreement that they would do?

18 A. Correct.

19 COMMISSIONER DOSTER: Thank you.

20 THE WITNESS: Yes, sir.

21 EXAMINATION

22 BY COMMISSIONER SEAY:

23 Q. I think that's the same question, under what
24 authority did you think that you had to authorize him to
25 stay in Special Risk to guarantee him that through the

1 determine today. It was not -- I did not go in with the
2 knowledge of knowing that it would actually work that
3 way.

4 Coming in from the Mayor's point of view, we
5 were just, as Commissioners, wanted to ensure that he
6 would be able to keep that status, and maybe it was --
7 had fallen on me to be able to move it to that next
8 level, and I am not prepared to really give a valid
9 answer on why or why not, it's just it was our
10 understanding when he came into that contract he would
11 keep that status.

12 Q. So you assumed whether he was the City Manager
13 or went back to the police department he would remain in
14 Special Risk?

15 A. Yes, ma'am. That was my understanding.

16 COMMISSIONER SEAY: That's all the questions.

17 EXAMINATION

18 BY CHAIRPERSON MYERS:

19 Q. That was for the interim, but when he became a
20 permanent, when you appointed him permanently to that
21 position, it seems to me that someone would have
22 questioned the State or questioned whoever was in charge
23 of paying the monthly fees to the State as to can we do
24 this?

25 A. We were under the assumption -- you're right,

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1 but we were under the assumption since we did not --
 2 there was nothing keeping us from doing that, we didn't
 3 hear anything; so I was under the impression that it
 4 would just follow him throughout his career. That was
 5 my assumption.

6 Q. You understand the Special Risk is for certain
 7 categories only, and then we have regular, and then we
 8 have the Senior Management. They have the Senior
 9 Management now of which booklets were sent out to
 10 members that should have had -- that someone should have
 11 had it to refer to.

12 A. That's absolutely right. We were thinking
 13 since he kept his certificate up and he was still in
 14 that same category, that he would --

15 Q. But he wasn't doing Special Risk at that time.
 16 He was not actually doing Special Risk. He was -- his
 17 -- most work was done as Manager, City Manager, right?

18 And what time -- and he wasn't actually
 19 working in the Department at all times, he consulted
 20 with the Department and things like that, but he wasn't
 21 actually -- he was still in upper management of that.

22 And even at that, when police or the sheriff's
 23 department are out in the field and in Special Risk,
 24 when they sometimes get transferred into a desk -- what
 25 we call a "desk job," why, they're taken off of that

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1 Special Risk because they're not Special Risk anymore;
 2 so that's why I don't understand why somebody didn't
 3 click that, "Hey, he's not out there in the field
 4 anymore, and so he wouldn't be under Special Risk."

5 REDIRECT EXAMINATION

6 BY MR. SMITH:

7 Q. I got a couple follow-ups. First of all, you
 8 were asked whether you worked on my campaign. I just
 9 want to say, if you did, you needed to have done more.

10 But how long have we known each other?

11 A. That's another one of those.

12 Q. How long have I known your family, your aunts?
 13 A. 40 years.

14 Q. Is there anything -- your testimony here --
 15 been based on the fact that you've known me, we've known
 16 each other in Alachua for about as long as we can
 17 remember?

18 A. No, sir.

19 Q. You were asked by Commissioner Myers a
 20 question about whether or not -- now, going back in 2002
 21 until 2007, during that time period -- before that time
 22 period, had anybody ever had the title City
 23 Manager/Police Commissioner?

24 A. No.

25 Q. Police Commissioner was set up at that time

1 because it was to keep him -- and, in fact, he had
 2 specific assignments in the police department?

3 A. That's correct.

4 Q. In 2007 -- by 2007, to your knowledge, he had
 5 actually acted on that authority on at least one
 6 occasion which ultimately led to some of the complaints
 7 in this -- in other words, he had been involved in
 8 arrests and police activities?

9 A. That's correct.

10 Q. And then it was determined that he could not
 11 do any of the actual works of Police Commissioner other
 12 than ex officio because FDLE would not allow him for
 13 fear it would violate dual office holding, do you
 14 remember that?

15 A. I do remember that.

16 Q. But prior to that time, between the time he
 17 took office and until 2007 when he was removed, he was
 18 doing the activities that were originally anticipated?

19 A. He was.

20 MR. SMITH: Nothing further.

21 MS. STEVENS: Just a couple follow-up
 22 questions.

23 RECROSS EXAMINATION

24 BY MS. STEVENS:

25 Q. You just said from 2002 to 2007 he was doing

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1 these activities as a police commissioner, is that
 2 correct, as a police commissioner, going out and making
 3 arrests and acting as a police officer, wasn't he?

4 A. Yes.

5 Q. But he wasn't allowed to do that, was he?

6 MR. SMITH: Now, I think it's a legal question
 7 because we know that we got a ruling in 2007 on
 8 that, but prior to 2007 that ruling hadn't come
 9 about yet.

10 I don't know how she's going to know the legal
 11 status. The answer is in 2007 they said it's dual
 12 office holding, and it became entitled "ex
 13 officio," but he was doing those duties prior to
 14 that. Then we get a ruling. How's she going to
 15 know?

16 BY MS. STEVENS:

17 Q. I could go out and arrest people, too. I
 18 mean, but that wouldn't give me Special Risk. He's not
 19 allowed to do it, so he's not allowed to do it.

20 But let me ask you about --

21 MR. SMITH: I'm sorry. Are you testifying?

22 CHAIRPERSON MYERS: You've been doing an awful
 23 lot of it.

24 MS. STEVENS: Thank you.

25 BY MS. STEVENS:

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1 Q. Now, the contract says, "To the extent
2 permitted by law, the City will continue to recognize
3 and contribute to the State Retirement Fund for the
4 employees," et cetera, et cetera, et cetera.

5 What was meant by "To the extent permitted by
6 law"?

7 MR. SMITH: If you know.

8 A. That's not self-explanatory? I mean, "To the
9 extent...."

10 BY MS. STEVENS:

11 Q. I'd like for you to explain it to me. I have
12 no idea what it means. What does that mean? It's in
13 your contract.

14 A. "To the extent --"

15 Would you read that to me again?

16 Q. The phrase, "To the extent permitted by
17 law..." paraphrased "...will still continue to report
18 Clovis as Special Risk."

19 What does "To the extent permitted by law,"
20 what does that mean to you, and what does it mean in the
21 contract?

22 A. It means that he was allowed to do those
23 duties based on what the law stated. That's my
24 understanding of it.

25 Q. Now, at the time the contract was entered

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1 Administrative Support Class."

2 Wouldn't that be in conflict with what you
3 just said?

4 You need me to read it again?

5 A. I'm trying to figure out which way you're
6 coming from with this so I'll know how to respond.

7 No, I don't need you to read it again, but
8 you're saying it's in conflict with what I just said?

9 Why would you say that?

10 Q. Because -- and this is in a response that was
11 filed yesterday by Mr. Smith, and it's talking about the
12 agreements made between the City and Mr. Watson, and it
13 says -- I'll put it in context. It was talking about
14 Mr. Watson's eligibility for reinstatement to Alachua
15 Police Department, and you testified to your knowledge
16 of that, correct?

17 A. Right.

18 Q. So you know that he was eligible for
19 reinstatement; and in talking about the reinstatement,
20 it says that "The City was trying to assure the
21 Petitioner, Mr. Watson, that even if he was ever
22 determined that he was not Special Risk eligible, he
23 would still be able to take advantage of the Special
24 Risk Administrative Support Class."

25 Doesn't that mean that the City contemplated

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1 into, did the City, to your knowledge, ever contemplate
2 that Mr. Watson would not be eligible for Special Risk?

3 A. We never thought that he would be not
4 considered for Special Risk. I mean, that was one of
5 the stipulations of the contract. That's one of the
6 ways that we were hoping that he would actually stay on
7 with the City after being there so many years, and we
8 actually needed someone that was competent and committed
9 to the community; so I guess that's where my thought
10 processes were at that time, is that we were going to
11 find somebody that was there and that was from there
12 that would be -- that knew everybody in the community,
13 and would be able to carry on that role.

14 Q. So you're saying that the City just never
15 contemplated that; that he might not be eligible,
16 correct?

17 A. I guess you could say that.

18 Q. Let me read you a sentence, and I don't know
19 if it's worded very well, so I will read it slowly.
20 "Plainly the City was trying to ensure that

21 Petitioner -- excuse me.

22 "Plainly the City was trying to assure
23 Petitioner that even if he was ever determined that he
24 was not Special Risk eligible, he would still be able to
25 take advantage of the provisions of the Special Risk

1 it at the time of making the agreement?

2 MR. SMITH: I'm going to object to this. That
3 language in that that's referred to in that
4 argument comes up in a later contract, not the
5 first two contracts.

6 MS. STEVENS: Whenever you make a contract you
7 say that it's retroactive. You always say in the
8 contract --

9 MR. SMITH: You can ask her if she knows what
10 that's about or if she even knows what the Special
11 Risk Administrative Class is.

12 BY MS. STEVENS:

13 Q. Are you able to answer that question?

14 A. Why don't you repeat the question for me.

15 MS. STEVENS: That's fine. I think we all get
16 the point. No further questions.

17 THE WITNESS: Thank you.

18 What I do want you to know is during the time
19 when Mr. Watson came on board, we had -- I'm sure
20 you've heard this, but I just want to get this off
21 my heart based on what we are coming up here for
22 today -- is when he came on board, it was -- we
23 were a small community, and he was like a man
24 falling from the sky because we had gone through
25 and paid a lot of money to recruit a lot of the

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1 city managers from --
 2 MS. STEVENS: Madame Chairman, I have to
 3 object to this. We've heard before that
 4 circumstances under which he became City Manager,
 5 and she's been asked all of her questions.

6 CHAIRPERSON MYERS: We have a whole box of
 7 that.

8 THE WITNESS: That's fine. I appreciate that.
 9 Thank you.

10 MR. SMITH: That's it. Thank you. You can
 11 stay in here if you want to.

12 THE WITNESS: Okay.

13 (The witness was excused.)

14 MR. SMITH: Nothing further.

15 CHAIRPERSON MYERS: Ms. Stevens?

16 MS. STEVENS: The Division calls Joyce Morgan.

17 * * * * *

18 Whereupon,

19 JOYCE MORGAN

20 was called as a witness, having been first duly sworn to
 21 speak the truth, the whole truth and nothing but the
 22 truth, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. STEVENS:

25 Q. Ms. Morgan, state your full name for the

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1 boards, and for personnel and payroll compliance with
 2 Statutes 121.

3 Q. And, please, just briefly describe your
 4 current job duties.

5 A. My current job duties as the Benefits
 6 Administrator is to determine the eligibility of members
 7 of the Florida Retirement System and the five retirement
 8 plans and the five retirement classes.

9 We also bring new agencies in to the Florida
 10 Retirement System, and we administer the Social Security
 11 agreements for the State of Florida for governmental
 12 agencies.

13 Q. And are you familiar with the statute that
 14 details the Special Risk membership class?

15 A. Yes.

16 Q. What statute is that?

17 A. Statute 121.0515.

18 Q. Please describe your involvement at the
 19 Division with the Special Risk membership class.

20 A. We determine those members who are eligible to
 21 continue in the Special Risk Class. We approve
 22 applications for members making application into the
 23 Special Risk Class, and we also monitor the payroll data
 24 coming in for Special Risk members.

25 Q. Are you familiar with the statute that details

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1 record.

2 A. Joyce W. Morgan.

3 Q. What is your professional address?

4 A. 1317 Winewood Boulevard, Tallahassee, Florida.

5 Q. What is the name of your employer?

6 A. Department of Management Services, Division of
 7 Retirement.

8 Q. How long have you worked for your current
 9 employer?

10 A. 19 years.

11 Q. What is your position title?

12 A. My position title is Benefits Administrator.

13 Q. How long have you been in this position?

14 A. I've been in this position for four years.

15 Q. What position did you hold before you were the
 16 Benefits Administrator?

17 A. Prior to being the Benefits Administrator, I
 18 was a Senior Management Analyst. I was an auditor for
 19 the State Retirement System under the Office of
 20 Inspector General and also under the Department of
 21 Management Services.

22 Q. And what were your duties as an auditor?

23 A. As an auditor, I traveled throughout the State
 24 of Florida auditing local retirement agencies, cities,
 25 governmental entities, school -- charter schools, school

1 the Senior Management Service Class?

2 A. Yes, I am.

3 Q. What statute is that?

4 A. 121.055 of the Florida Statutes.

5 Q. Please describe your involvement at the
 6 Division with this class?

7 A. We accept and review and approve designations
 8 of positions that are designated by local agencies. We
 9 also monitor the compliance for compulsory positions
 10 with local agencies, and also with state agencies. We
 11 monitor and keep track of Senior Management Service
 12 Class positions.

13 Q. Are you familiar with statutes regarding the
 14 Special Risk Administrative Support Class?

15 A. Yes, I am.

16 Q. What statute is that?

17 A. That's 121.0515(7) I believe.

18 Q. Are you familiar with the corresponding rules?

19 A. Yes.

20 Q. Have you ever been qualified as an expert in
 21 FRS enrollment and eligibility?

22 A. Yes, I have.

23 Q. Before who?

24 A. Before the Division of Administrative
 25 Hearings.

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1 MS. STEVENS: At this time, I'd like to offer
 2 Joyce Morgan as an expert in FRS enrollment and
 3 eligibility. Is there any objection?

4 MR. SMITH: There's an objection to the degree
 5 she's a fact witness on anything that took place in
 6 the case. She's not allowed to -- she can testify
 7 as to the facts of this case as a fact witness.
 8 She can't be a fact witness as well as your expert.

9 MS. STEVENS: A person is an expert if they
 10 have knowledge of any particular type of fact. The
 11 -- excuse me -- on any type of subject matter, and
 12 the special knowledge can be obtained any way even
 13 by practical experience. She's been qualified as
 14 an expert in FRS enrollment and eligibility before
 15 DOAH. There's no exact -- there's no exact way to
 16 do it, and you can become an expert witness by your
 17 job alone.

18 MR. SMITH: I don't dispute any of that. I'm
 19 simply saying -- I don't dispute that she's an
 20 expert. I assume she is an expert.

21 All I'm saying is to the degree she's a fact
 22 witness, those issues to which she testifies as a
 23 fact witness are not accepted as expert testimony.
 24 They can't be.

25 MS. STEVENS: Well, sure. If she's testifying

1 that reason because --

2 COMMISSIONER SEAY: Madame Chair, I think the
 3 fact she works for the Division --

4 CHAIRPERSON MYERS: Well, yes, but the fact
 5 that she does work for the Division and she has
 6 been made an expert.

7 COMMISSIONER SEAY: It's questioning her
 8 decisions, so she can't play--

9 MS. STEVENS: As you said earlier regarding
 10 the evidence, you know that. You can give it the
 11 weight you want to give it, but at the same time,
 12 she is that expert.

13 COMMISSIONER SEAY: Knowledgeable.

14 MS. STEVENS: I can't go outside the Division
 15 to get an expert in eligibility and enrollment
 16 because no one outside the Division is an expert in
 17 FRS eligibility and enrollment. It doesn't happen.

18 MS. GUSTAFSON: Madame Chair, ask her whether
 19 or not she had anything to do with any of the
 20 decisions that were made in Mr. Watson's case.

21 CHAIRPERSON MYERS: Were you the one who --
 22 the decision factor? I mean, were you the one who
 23 made the decisions on this case?

24 THE WITNESS: Yes.

25 CHAIRPERSON MYERS: You were involved in it?

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1 about a fact, she can draw a conclusion based on
 2 those facts. That would be expert testimony.

3 MR. SMITH: No. If she draws a conclusion and
 4 she is the one, Madame Chairman, that made a
 5 decision, and that decision is the action acted
 6 upon, she's entirely a fact witness as to that.
 7 She's an expert witness as to the law.

8 She's not an expert as it relates to any facts
 9 that she was involved in and decisions that she
 10 made. As to those things, she's a fact witness
 11 like anyone else, and her testimony is not entitled
 12 to allow her to state opinions beyond what anybody
 13 else would be able to state as to those things in
 14 which she's a fact witness.

15 MS. STEVENS: We would respectfully disagree.
 16 She's been qualified as an expert witness before
 17 DOAH in enrollment and eligibility. She can
 18 certainly testify as to whether someone has been
 19 properly enrolled or eligible for a Special Risk
 20 Class membership. She is also knowledgeable about
 21 the facts. She can certainly be an expert witness
 22 in regards to whether an individual has been
 23 properly enrolled or is eligible in certain
 24 membership classes.

25 CHAIRPERSON MYERS: I think she can be for

1 THE WITNESS: Yes.

2 MR. SMITH: You can't wear both hats.

3 MS. COCHEU: Hold on. Let us talk for a
 4 minute.

5 CHAIRPERSON MYERS: She was involved with it,
 6 and we can accept her as a fact witness, and we
 7 don't have to have her as an expert to give us a
 8 little additional materials and information on it.

9 MS. STEVENS: I would like my objection noted
 10 for the record, but we can proceed.

11 MR. SMITH: Madame Chair, she can't give her
 12 opinion regarding her opinion. She can give her
 13 opinion. I think we're arguing about much that
 14 doesn't matter.

15 MS. COCHEU: You guys are arguing.

16 MS. GUSTAFSON: We're not arguing.

17 CHAIRPERSON MYERS: We just want to hear the
 18 facts she has come up with. That's all.

19 BY MS. STEVENS:

20 Q. Ms. Morgan, are you familiar with this case?

21 A. Yes, I am.

22 Q. And how are you familiar with this case?

23 A. I'm familiar with this case because I received
 24 several phone calls from Mr. Grapski, and also
 25 documentation from Mr. Little; and prior to making a

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1 determination about this case, I received a phone call
 2 from Alex Gaskins from the Florida Department of Law
 3 Enforcement over the Office of Executive Inspections to
 4 take a look at this information. And so because of
 5 that, I became familiar with this case.
 6 Q. And have you had a chance to review your file
 7 prior to this hearing?

8 A. Yes, I did.

9 Q. Is Mr. Watson currently a member of FRS?

10 A. Yes, he is.

11 Q. And when did he become a member?

12 A. He became a member in 1977.

13 Q. When did he vest in the system?

14 A. He vested in the system approximately 1993.

15 Q. And you're familiar with the classes of
 16 membership within FRS?

17 A. Yes, I am.

18 Q. Can you please explain just generally what
 19 those classes of membership are.

20 A. The classes of membership are Regular Class,
 21 Special Risk Class, Special Risk Administrative Class,
 22 Elected Officer Class, and Senior Management Service
 23 Class.

24 Q. Just generally speaking, how does the Division
 25 determine whether someone is eligible for Special Risk

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1 web site.

2 Q. And has Mr. Watson participated in the Special
 3 Risk Class?

4 A. Yes, he has.

5 Q. As of what date?

6 A. As of -- Special Risk Class as of 1980- --
 7 excuse me -- November 1983.

8 Q. And how was it that he began participating in
 9 that class?

10 A. Actually he was first reported in the class as
 11 of March '84. We were notified by Ms. Traci Cain in
 12 2004 that they had in error not reported his first six
 13 months of service credit. That information was reviewed
 14 by the Division, and we approved -- going back to
 15 November 1983 -- Special Risk Class membership, so that
 16 was actually the beginning with an adjustment made in
 17 2004.

18 Q. And at the time Mr. Watson joined FRS in the
 19 Special Risk Class membership, did the City of Alachua
 20 begin reporting him as a Special Risk Class member?

21 A. Yes.

22 Q. What is supposed to happen regarding reporting
 23 when a Special Risk employee changes positions?

24 A. When a Special Risk member changes positions,
 25 if that position is not listed on the preapproved list,

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1 membership?

2 A. There are two ways that we make a
 3 determination. One: Prior to 2002, all members had to
 4 send in applications and job descriptions. If they did
 5 not have job descriptions, the Division would send a
 6 form, and they would complete the form with all the job
 7 duties and descriptions labeled out on that.

8 Since 2002 and the rework of our system, we
 9 now allow for preapproved positions based on the job
 10 descriptions we collected over the years; that we know a
 11 police officer, a deputy sheriff is always allowed and
 12 approved for Special Risk Class membership, so there are
 13 certain preapproved positions that we allow to be
 14 reported to the Division and enrolled through the
 15 payroll.

16 Any position title not listed on our list
 17 exactly as it's listed needs to have an application sent
 18 to the Division of Retirement along with the job
 19 description, and quite possibly other information if
 20 necessary. We would notify the agency if they needed to
 21 send additional information.

22 Q. And where is this list of preapproved
 23 positions?

24 A. This is in the FRS Employer Handbook, and it's
 25 also available online on the web site -- on the employer

1 then that agency should send in an application and job
 2 description.

3 If it is listed on the preapproved list, they
 4 are to use the preapproved class code and report it on
 5 their retirement -- monthly retirement report.

6 Q. Are cities notified of this responsibility?

7 A. Yes. It's in the employer handbook.

8 Q. Did the cities that participate in FRS have
 9 access to the handbook?

10 A. Yes. It's online and on their web site where
 11 they go in to log in to do their monthly retirement
 12 report.

13 Q. And do you know when it became available
 14 online?

15 A. I believe it was 2002.

16 Q. Has the handbook been amended since 2002?

17 A. Yes, it has.

18 Q. How many times approximately?

19 A. Numerous times. It's updated as things change
 20 and as updates. And as legislation changes, it is
 21 updated.

22 Q. Do you know whether the handbook contained
 23 this language since at least June of 2002?

24 A. The language about enrollment -- how to enroll
 25 and how to report for Special Risk?

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1 Q. Yes.
 2 A. That's correct. It has been there since 2002.
 3 Q. Does this handbook contain any type of
 4 disclaimer language?
 5 A. It does in the introduction. Should there be
 6 any discrepancy or any questions, that the statutes are
 7 the final authority.
 8 Q. To your knowledge, did Mr. Watson at any time
 9 leave his position as a law enforcement officer?
 10 A. Yes, he was.
 11 Q. On what date?
 12 A. He left his position, according to his
 13 contract, August -- August 28, 2002 was the effective
 14 date of his contract.
 15 Q. And at this time, did he reapply for Special
 16 Risk membership?
 17 A. No, he did not.
 18 Q. In fact, at this time when Mr. Watson changed
 19 positions, was the Division even notified by the City of
 20 Mr. Watson's position change?
 21 A. No, we were not notified.
 22 Q. Were you notified by Mr. Watson of his
 23 position change?
 24 A. No. Mr. Watson did not notify us.
 25 Q. At this time did anybody notify you of the

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1 position change?
 2 A. No, we were not notified of the position
 3 change.
 4 Q. Did the City continue to report Mr. Watson
 5 under the Special Risk Class code after he was appointed
 6 to the City Manager position?
 7 A. Yes. The City continued to report him as --
 8 under Special Risk.
 9 Q. And do they still do that?
 10 A. Yes. They still do that. Every month they
 11 report him under Special Risk. Every month we go in and
 12 do a plan change and change him to the correct plan
 13 under Senior Management Service Class.
 14 Q. When did the Division become -- to your
 15 knowledge, when did the Division become aware of
 16 Mr. Watson's position change?
 17 A. Approximately May of 2007.
 18 Q. Who was that -- I'm sorry. How did we become
 19 aware of that change?
 20 A. As I said, I received phone calls, but we
 21 didn't act on phone calls because we get phone calls all
 22 the time from individuals. We were waiting to see if
 23 any documentation arrived to follow through with a
 24 determination to even see if there was anything to
 25 Mr. Watson being reported incorrectly.

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1 We were not aware of whether he was truly
 2 reported incorrectly.
 3 Q. Do you know Mr. Andy Snuggs?
 4 A. Yes, I do.
 5 Q. Do you know what his position is?
 6 A. Mr. Snuggs is a benefits administrator in the
 7 Bureau of Retirement Calculations.
 8 Q. Do you know whether his duties include
 9 eligibility for -- or determining eligibility for
 10 Special Risk membership?
 11 A. No. His duties do not include determining
 12 eligibility. His duties -- those duties are housed in
 13 the enrollment section under my supervision.
 14 Q. I'd like to talk just a little bit about the
 15 Special Risk Class. Special Risk Class, excuse me, do
 16 you know when this class was created?
 17 A. Special Risk Class was created under the
 18 Florida Retirement System, December 1, 1970.
 19 Q. Can you just explain a little bit about what
 20 that is?
 21 A. Yes. The Special Risk Class was intended to
 22 make an equitable retirement -- equitable retirement
 23 class with the regular class for those people who could
 24 not do physical or mental strain, keep up with their job
 25 to age 62, or 30 years of retirement. Therefore, a

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1 class was created and the annual multiplier was adjusted
 2 so that at age 55 and 25 years of service, their
 3 retirement benefit would be equitable to someone serving
 4 30 years of service or age 62.
 5 Q. I know there are several categories that are
 6 eligible for Special Risk Class membership, and I'd like
 7 to talk specifically about law enforcement officers
 8 since that's what's at issue in this case.
 9 Can you tell me the criteria for a law
 10 enforcement officer's inclusion in the Special Risk
 11 Class?
 12 A. Yes. For a law enforcement officer to be
 13 approved for Special Risk, the first criteria is they
 14 must be fulfilling a law enforcement position.
 15 Once fulfilling a law enforcement position,
 16 then the member's duties and responsibilities must
 17 include pursuit, apprehension, and arrest or be a member
 18 of the bomb squad or a supervisor that is a law
 19 enforcement officer filling a position who is their
 20 supervisor.
 21 So if you do not have the duties of pursuit,
 22 apprehension, and arrest, you must be directly
 23 supervising those, but at that time still need to be a
 24 law enforcement officer.
 25 Q. Has this criteria changed at all between 2002

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1 and now?

2 A. No, it has not.

3 Q. And you said you reviewed Mr. Watson's records
4 in your possession. Just briefly, what do those records
5 include?

6 A. When we reviewed Mr. Watson's records, what
7 was forwarded to us was a copy of his contracts from
8 '02, and subsequent contracts: '02, '03, '04.

9 And we were able to verify through some other
10 documentation and through FDLE information that we
11 received at that time, Mr. Watson was filling a
12 compulsory position as a Senior Management under the
13 Senior Management Class as the City Manager.

14 Q. Do any of the documents indicate that
15 Mr. Watson's title included the title of Police
16 Commissioner?

17 A. Yes. That was in his contract.

18 Q. Do you know why he had that title?

19 A. According to the contract, he had that title
20 so that he could continue to receive Special Risk
21 coverage.

22 Q. Let me ask you this, Ms. Morgan: Does
23 Mr. Watson's continuing eligible for reinstatement to
24 the Alachua Police Department have any bearing on
25 whether he's eligible for Special Risk?

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1 A. No, his reinstatement -- his reinstatement to
2 the police department would not have any bearing on
3 whether his City Commission job is eligible for Special
4 Risk -- the City Manager job, excuse me.

5 Q. Ms. Morgan, you testified that it's part of
6 your job duties to determine whether people are eligible
7 for Special Risk membership. In your opinion, does
8 Mr. Watson meet these requirements?

9 A. No, he does not. He's not fulfilling a law
10 enforcement position, the number one criteria.

11 Q. Do you know of any other person who is
12 currently a city or county manager in Florida who's also
13 a Special Risk member?

14 A. No. No other city or county managers, to our
15 knowledge, who is fulfilling a Special Risk Class
16 position is being reported under the Special Risk Class.

17 Q. What about past city or county managers in
18 Florida, have any of them, to your knowledge, while
19 being employed as a city or county manager also been a
20 Special Risk member?

21 A. No, not to our knowledge.

22 Q. And if you found out that a city or county
23 manager was being reported as a Special Risk member
24 while employed as a city or county manager, how would
25 you handle that?

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1 A. We would do the exact same thing: Make a plan
2 change. It's just a plan code change from one plan code
3 to the other, to take the person out of the Special Risk
4 plan and put them into the Senior Management plan, make
5 the adjustment, and notify the agency.

6 Q. You said this is a plan change. How often
7 does the Division do plan changes?

8 A. We average about 3,000 a month. Every single
9 line -- every single person who's reported for
10 retirement, all 660,000 people have a data line that
11 comes into the Division of Retirement.

12 We run that data line through 100-plus edits.
13 Those edits generate all sorts of errors. Every month I
14 have a staff that's what we work throughout the entire
15 month. We work those plan edits; so if they're reported
16 in an incorrect plan, we have certain edits that will
17 detect that.

18 For a compulsory position, had the correct
19 position number been reported and the Special Risk, it
20 would have erred out in our system; however, we didn't
21 have the position number on the payroll, so that didn't
22 -- we didn't catch that error. But normally through
23 reporting, we catch the errors and correct those and
24 notify the agencies.

25 Q. Let's talk about the plan code change,

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1 specifically Mr. Watson's plan code change. Please
2 describe the plan code change for Mr. Watson.

3 A. For Mr. Watson, once we receive the
4 information, we realize that if he's filling a City
5 Manager position, it's a compulsory position. That's
6 HM, plan code, or if he had been in the investment plan,
7 we would have changed it to a PM code.

8 We do that on -- through our system called
9 IRIS. It generates a notification. Usually it's a memo
10 form, but in this case because there was other
11 information, we decided we needed to indicate more
12 thoroughly to the agency to let them know we still
13 needed additional information.

14 But normally we simply change the plan code,
15 notify the agency, and ask them to report it correctly
16 on their next payroll report.

17 Q. You said the Division does this about 3,000
18 times a month. Does the final agency action go out for
19 every one of these plan code changes?

20 A. No, no. Most of the time they're just errors
21 or the agency didn't know, or for some -- whatever
22 reason, it comes to our attention. It could be a
23 repeated error. If it is, we notify them. Once it's
24 the third notification, then we would contact the agency
25 either by calling them or elevating it to my attention.

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1 Q. With regards to this particular plan code
 2 change, can you explain why the final agency action
 3 letter went out when it did?

4 A. Yes. In this case, we had several things that
 5 we were looking at at one time. The first thing was to
 6 change the plan code and get the member into the right
 7 plan. So we changed the member from the HB Special Risk
 8 plan code to HM.

9 Since we have the contracts, we were concerned
 10 also in the first year -- as we were looking through,
 11 the first year contract said that the contract was for
 12 \$80,000.

13 On our payroll report, I believe we saw over
 14 \$140,000 reported. So our second action was to find out
 15 if fringe benefits were reported in with salary.

16 There's certainly salary that's retirement
 17 eligible and there are certain salary that is not, such
 18 as the car allowance, any bonuses for education. I
 19 believe there were several things outlined in the
 20 contract.

21 This still didn't come up to the
 22 140-plus-thousand dollars, but we needed to find out
 23 what is the salary that's reported, is it all eligible
 24 for retirement.

25 We also at that time wanted to figure out

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1 switchover.

2 Q. You say you have 900 agencies reporting, any
 3 idea how many members there are?

4 A. Total -- our membership is over 660,000 active
 5 members.

6 Q. Now, when was Senior Management Service Class
 7 created?

8 A. It was created in February 1987.

9 Q. At that time were city or county managers
 10 eligible for Senior Management Service Class?

11 A. No. In fact, Senior Management Service Class
 12 was created -- it was only created for state senior
 13 managers, and that was state senior managers separate
 14 from career service, and those individuals -- and select
 15 exempt. There are select exempt positions.

16 But those individuals had a special class that
 17 allowed them -- if they were over a Pay Grade 9, allowed
 18 them to participate in this class with a higher
 19 multiplier, and they were not subject to career service,
 20 they did not have any guarantee of employment, and they
 21 were in positions that required them to be over budgeted
 22 areas and in managerial, and policy making.

23 So those state employees who filled that
 24 criteria and were Pay Grade 9 and higher were
 25 automatically -- and compulsory actually -- in this

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1 which salary went with the city manager job and which
 2 salary went with the police commissioner job.

3 Since city manager's compulsory, that's the
 4 position that this individual would be enrolled under;
 5 so we wanted to split out the police commissioner
 6 salary, so it took us quite a while to get the
 7 information we needed and to verify everything from the
 8 City.

9 We were asking for information. We were
 10 getting letters back, but we weren't getting information
 11 timely to break out salaries and to verify why the
 12 salary was so much greater than contract salary.

13 Q. Now, let's move our focus to Senior Management
 14 Service Class. What retirement class is Mr. Watson
 15 currently a member?

16 A. Currently a member -- he's a member of the
 17 Senior Management Service Class. The agency reports him
 18 incorrectly every month. We make the adjustments every
 19 month. Now that we have -- now that we know he is in
 20 Senior Management, we actually -- there's actually an
 21 edit that catches that, and we can catch it every month.

22 But every month they report him as Special
 23 Risk and every month we switch him over, which is not
 24 unlike some other agencies we have to follow behind, but
 25 with over 900 agencies reporting, there's a lot of

1 class of Senior Management.

2 Q. When did these positions become eligible for
 3 Senior Management Service Class?

4 A. The state positions, in February of 1987.

5 Q. What about --

6 A. The --

7 Q. What about the local employee positions?

8 A. Local employees came in in January 1, 1990.

9 The first positions that came in were for compulsory
 10 positions. Those with were community college
 11 presidents, city managers, county managers, and
 12 appointed superintendents. Compulsory members of the
 13 Senior Management Service Class.

14 Q. What date did Mr. Watson's membership in
 15 Senior Management Service Class begin?

16 A. 2002, I believe it was. August 2002.

17 Q. And why was he moved to this class?

18 A. Because as a city manager, he's a compulsory
 19 member of the Senior Management Service Class.

20 Q. Does the statute provide an alternative for
 21 city or county managers?

22 A. Yes. We look at the statutes. It says,
 23 "Except as in Subparagraph 2...."

24 Subparagraph 2 is the only option for local
 25 compulsory employees, Senior Management employees, and

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1 that is to withdraw from the Florida Retirement System
 2 altogether. So they have a choice of participating as
 3 compulsory Senior Management participants or withdrawing
 4 from the FRS altogether.

5 Q. If Mr. Watson remained in the Senior
 6 Management Service Class, at what point could he retire?
 7 A. He could retire with 30 years of service or
 8 age 62.

9 Q. Do you have any idea when 30 years of service
 10 would be?

11 A. No. But also that's -- that also is something
 12 that our Retirement Calculations Bureau would need to
 13 look at, too, because with 19 years of service in
 14 Special Risk, there may be -- there may be another date
 15 that he can retire; so I don't want to speak on that
 16 because I'm not an authority on retirement calculations,
 17 but no greater than 30 years.

18 Q. Okay. Are you familiar with the election
 19 found in Subsection(6)(c)(3) of the Senior Management
 20 Service Class statute?

21 A. Yes.

22 Q. Can you please explain this election?

23 A. Yes. For state employees, in 121.55(1)(a),
 24 state employees may participate in the Senior Management
 25 Class, or at the time in 1987, they could participate in

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1 A. If a state employee elected to go into SMORP,
 2 they would -- within 90 days of hire, they would have to
 3 send in an election to the Department of Management
 4 Services, who reported to our Division, the Division of
 5 Retirement.

6 They would also have to file with the
 7 personnel office an election to participate. It is
 8 their election to participate in the Senior Management
 9 -- in the Special Risk.

10 Q. Are these requirements set by statute?

11 A. Yes.

12 Q. And is it the Division's practice to notify
 13 members who are eligible of this election of their
 14 election option?

15 A. No. We do not notify the individuals.

16 Q. Did Mr. Watson file an election within 90 days
 17 of his appointment as City Manager?

18 A. No. The Division did not receive an election
 19 from Mr. Watson.

20 Q. Mr. Watson said the City of Alachua continuing
 21 to report him to the Division as a Special Risk member
 22 is an election, would you agree with that?

23 A. No. The City of Alachua is required to report
 24 monthly all of their employees on the retirement report.
 25 So fulfilling their obligation to report their employees

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1 an optional retirement program. We tend to call it
 2 SMORP: Senior Management Optional Retirement Program.
 3 It's a little bit longer name now.

4 But for those individuals, they could actually
 5 have a defined contribution plan. They could
 6 participate in that, and the State currently puts in
 7 12.49 percent. It is pretty much an obsolete plan
 8 because now that we have the investment plan, very few
 9 state employees go into the State Op -- O-R-P plan, the
 10 SMORP plan, the optional annuity plan.

11 Currently we only have 49 members out of the
 12 600- -- well, I guess out of state employees, about 140.
 13 There are only 49 members currently participating, and
 14 that number's dwindling, but we have the investment plan
 15 open to everyone; so the state employees usually go into
 16 the investment plan.

17 Q. Is Mr. Watson a state employee?

18 A. No. Mr. Watson is not a state employee.

19 Q. So is he even eligible to make this?

20 A. No. Paren 6 only deals with SMORP and the
 21 state employees who are eligible for that. No, he's
 22 not.

23 Q. Now, let's talk about state employees. If
 24 they are eligible to make this election, what are the
 25 election requirements?

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1 monthly is not an election.

2 Q. If an application for Special Risk membership
 3 were to be filed within 90 days of appointment, would
 4 that be considered an election?

5 A. Yes. If we received a Special Risk
 6 application, we would have considered that an election.

7 Q. And, Ms. Morgan, I'm just going to ask you a
 8 couple questions about the Special Risk Administrative
 9 Support Class, is this a separate class from the Special
 10 Risk Class?

11 A. Yes. The Special Risk Administrative Support
 12 Class was designed for Special Risk members who are no
 13 longer in the -- law enforcement, correctional,
 14 firefighters -- who are no longer doing those duties,
 15 which are really very physically demanding, very
 16 mentally demanding.

17 If they go into an administrative job, if
 18 they're promoted, if they're out of the demanding job
 19 but still within their unit of firefighting, law

20 enforcement, correctional officer, then the Special Risk
 21 Class is designed so that those people can participate
 22 in that class, they receive regular class multiplier
 23 each year, but they can retire with 25 years of service.

24 Q. And what are the criteria for participating in
 25 this class?

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1 A. In this class you have to stay -- you have to
 2 remain certified, stay within your unit, and you need to
 3 be able to be reassigned within your -- where you have
 4 your certification.

5 It needs to be an administrative support
 6 position; so whatever it is, if it's law enforcement, it
 7 needs to be a law enforcement support position, a
 8 firefighter support position in order to meet the
 9 criteria for the Administrative Support Class.

10 Q. And do you review applications for membership
 11 in the Special Risk Administrative Support Class?

12 A. Yes, we do.

13 Q. Do you make determinations as to whether
 14 members are entitled to membership in this class?

15 A. Yes.

16 Q. Based on what you know about Clovis Watson in
 17 this position, is he eligible for inclusion in the
 18 Special Risk Administrative Support Class?

19 A. No, he would not be eligible.

20 Q. And why not?

21 A. Because he hasn't stayed -- if there was an
 22 agency that has multiple units, you would need to be
 23 within the unit that is either the fire fighting, law
 24 enforcement, correctional unit. You cannot -- it's not
 25 broad across the entire city. It would have to be

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1 documentation.

2 We reviewed his global profile sheet. Saw
 3 that he was indeed employed with the Alachua Police
 4 Department at that time, and granted the six months of
 5 service credit where he was entitled to.

6 Q. So at that time, had he already been separated
 7 from his law enforcement officer position with FDLE,
 8 since you reviewed his global profile sheet which lists
 9 that status, you would have seen that?

10 A. Right. On his global profile sheet, it showed
 11 him still being a Special Risk member, so there was no
 12 separation date on the 2004 global profile sheet.

13 Q. Going back to the correspondence in his file,
 14 was there anything to show that Mr. Watson contacted the
 15 Division regarding eligibility for Special Risk
 16 membership when employed as a city manager?

17 A. No, there's nothing in his file.

18 Q. So, to your knowledge, the City and Mr. Watson
 19 entered into his initial employment contract which
 20 stated he was entitled to Special Risk membership
 21 without ever contacting the Division to determine if
 22 that were true?

23 A. That's correct.

24 MS. STEVENS: I don't have any other
 25 questions.

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1 within the unit, the police department unit if he's
 2 willing to remain in law enforcement.

3 Q. Ms. Morgan, does the Division keep all
 4 correspondence regarding a member in the member's file?
 5 A. Yes. Any correspondence received, we maintain
 6 that in the member file.

7 Q. Have you reviewed this correspondence in
 8 Mr. Watson's file?

9 A. Yes, I have.

10 Q. Is there any evidence that the City contacted
 11 the Division to inquire about whether Mr. Watson be
 12 entitled to Special Risk membership as City Manager?

13 A. No, there's nothing around the time that
 14 Mr. Watson took over as City Manager. We do have
 15 something in 2004 asking for an additional six months of
 16 service credit under the Special Risk Class for
 17 Mr. Watson, but nothing prior to that when he first took
 18 office as City Manager.

19 Q. And what happened at that time --

20 A. At that time --

21 Q. -- in 2004?

22 A. At that time we received information from
 23 Ms. Cain that Mr. Watson was not reported the first six
 24 months that he was working with the Alachua Police
 25 Department, and provided was his earnings and

1 CHAIRPERSON MYERS: Mr. Smith.

2 COMMISSIONER DOSTER: Excuse me, Madame Chair
 3 may we have a five-minute break?

4 (Whereupon, a five-minute recess was had.)

5 CHAIRPERSON MYERS: Mr. Smith.

6 MR. SMITH: Thank you.

7 * * * * *

8

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q. I have a few questions here. In 2004, Andy
 12 Snuggs was in the position of Benefits Administrator?

13 A. Yes.

14 Q. He has that position still?

15 A. Yes.

16 Q. Benefits Administrator, that position is at
 17 what level in the Department?

18 A. The Benefits Administrator is at the -- at the
 19 section level and under -- we have many benefit
 20 administrators. He works in the Bureau of Retirement
 21 Calculations.

22 Q. Were you aware in 2004 that Mr. Snuggs was
 23 involved in a change -- represented to the Department
 24 and, in fact, made a presentation on behalf of the

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1 Division as it related to the City of Alachua bringing
 2 all of their employees after 1996 into the FRS or the
 3 state plan from the former plan that they had been in
 4 which was a League of Cities' municipal plan?

5 A. I was not aware that Mr. Snuggs was there, and
 6 I know that's what he does, and they did come into the
 7 system in 2004 -- reentered the system.

8 Q. Mr. Snuggs never communicated to you that he
 9 met Mr. Watson who was the City Manager?

10 A. No, in fact --

11 Q. And never communicated to you that Mr. Watson,
 12 the City Manager, had in fact -- as part of the
 13 inducement to other employees -- said that he was a
 14 member of the Special Risk plan in 2004?

15 A. No.

16 Q. He never brought that to your attention?
 17 A. No.

18 Q. But in 2004, you did deal with Traci Cain on
 19 behalf of the City?

20 A. Yes.

21 Q. And at that time, she was the person that
 22 dealt with an issue which is -- actually Mr. Watson had
 23 came in November of '83 and first reported, I believe,
 24 in February of '84, and there was a six-month adjustment
 25 that needed to be made in his retirement; is that

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1 correct?

2 A. I did receive a letter from Traci Cain.

3 Q. That was written on City of Alachua
 4 letterhead?

5 A. I'm sure it was.

6 Q. And did you know on the City of Alachua
 7 letterhead it listed Clovis Watson, Jr. as the City
 8 Manager?

9 A. No.

10 Q. You have an edit department, and the edit
 11 department -- by the way, do you have that letter with
 12 you?

13 A. I may.

14 Q. The letter you received from the City of
 15 Alachua?

16 A. I may that.

17 Q. I'll get that later. I think you talked about
 18 ability to -- you said edits of the plans, which I took
 19 that to be as a method by which there is an ongoing
 20 monitoring or review of the plan and of the reports that
 21 are provided by the member -- by the agencies --

22 A. Correct.

23 Q. -- is that correct?

24 A. Correct.

25 Q. Yeah. And part of what you do is to see if

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1 there's any aberration in the reports that would
 2 indicate there's been some sort of a change or perhaps
 3 inaccuracy in the reporting?

4 A. Not necessarily a change, but if we can bounce
 5 the data against something else, we can spot errors. We
 6 have over a hundred that we can spot.

7 Q. And when you talk about spotting errors, one
 8 of the things you would look would be a discrepancy in
 9 the salary being reported from the salary that had been
 10 previously reported?

11 A. That would not come to my area. If that
 12 happened, I would not see it.

13 Q. Well, my question would be in 2002, when
 14 Mr. Watson came into the -- remained in the plan, the
 15 only thing I think -- according to Ms. Cain, and I think
 16 you would verify -- that they continued to list him as
 17 what's called an HB code, correct?

18 A. That's correct.

19 Q. The HB code being the one in which he would be
 20 listed as he had always been listed before, correct?

21 Because he had previously been at an HB code?

22 A. Yes.

23 Q. At that time his salary would have gone from
 24 54,000 to 80,000, which would have reflected that he was
 25 now making something like \$25,000 more than the Chief of

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1 Police, did your edit plan have any method by which it
 2 would have picked that up and raised an issue at that
 3 time?

4 A. No. We have an edit that looks for 250
 5 percent greater than the previous month which alerts us
 6 to people who are out on Workers' Comp, but not to
 7 compare -- unless it's 250 percent greater, then that
 8 error would not come to the enrollment section, that
 9 error would go to the contribution section.

10 Q. And no one ever raised that issue?

11 A. I'm not aware of it. It did not happen in the
 12 enrollment section. It may have happened in the
 13 contribution section.

14 Q. If it happened in the contribution section,
 15 would that have been communicated to you?

16 A. No. Under a different benefits administrator.

17 Q. So what they knew and what Mr. Snuggs knew
 18 wouldn't necessarily have been communicated to you or
 19 your section?

20 A. No.

21 Q. Now, you take -- I don't mean to cut this off,
 22 but I want to make sure I understand it -- you take the
 23 position that a person who is in the position of one of,
 24 I think, seven positions -- but I may be wrong on
 25 that -- but city manager, county administrator is a

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1 compulsory member of the system, and notwithstanding the
 2 fact that they're in a Special Risk or they have any
 3 other option, except for the option of dropping out of
 4 the system altogether, they have no other option except
 5 to be in Senior Management Services, correct?

6 A. Based on the statutes, yes.

7 Q. That's your reading of it?

8 A. Yes.

9 Q. And so all of this discussion you have about
 10 whether or not he met this requirement or he met the
 11 Special Risk requirement or the Special Risk
 12 Administrative Support requirement really wouldn't have
 13 mattered to you because the fact was your position was
 14 once he was City Manager, notwithstanding anything else
 15 in the statute, that alone was enough to remove him?

16 A. Correct.

17 Q. So in May of 2007 you began to get these phone
 18 calls from Mr. Grapski and his attorney Mr. Little,
 19 correct?

20 A. I don't remember speaking to Mr. Little prior
 21 to receiving documentation, but I do remember speaking
 22 to Mr. Grapski.

23 Q. Mr. Grapski called you. You didn't know
 24 anything about Mr. Grapski or his background. And
 25 because it is your practice because you get a lot of

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1 calls, you didn't do anything until you received
 2 something in writing from him.

3 A. (The witness nods head affirmatively.)

4 Q. You received something in writing on June 21st
 5 from him; is that correct?

6 A. That's correct. Dated the 21st.

7 Q. Well, you then received it the 21st or some
 8 day immediately thereafter?

9 A. Yes.

10 Q. On June 29, you sent to the City of Alachua a
 11 notice that -- it was to the Mayor of the City of
 12 Alachua, and in that you said that, "It is brought to
 13 our attention Mr. Watson has continuously participated
 14 in the Special Risk Class," and then what you did was
 15 you went on and you said, "As of that time, you were
 16 enrolling him in the Senior Management Services
 17 retroactive to 2002"?

18 A. September 1.

19 Q. Of 2002?

20 A. Yes.

21 Q. I want to be clear on this: At the time you
 22 sent that to Mr. Coerper, the Mayor, you had not spoken
 23 to Mr. Watson about this at all; is that correct?

24 A. That's correct.

25 Q. You had not spoken to the Mayor of the City at

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1 all?

2 A. That's correct.

3 Q. But you immediately implemented it?

4 A. That is correct. That is our policy.

5 Q. You implemented it as a plan code change,
 6 meaning the plan code change being something you say you
 7 routinely do, but you knew at the time you were doing
 8 this, that what you were really doing is you were taking
 9 away five years of a person's participation in a plan
 10 for which they would have accumulated substantial value?

11 A. We changed their plan from a 3 percent to a 2
 12 percent plan, correct.

13 Q. So the answer is you knew that you were taking
 14 away five years of benefits that was of substantial
 15 value, and you didn't afford him a hearing or an
 16 opportunity to be heard or even asked him any questions
 17 before you made that decision?

18 A. We were not through making decisions. We were
 19 still looking at salary, so we were not through. We had
 20 changed him from one plan to the other, and we were then
 21 looking at salary.

22 Q. I want to go back just to that to be clear on
 23 this: The question about salary had to do with whether
 24 or not certain benefits were wrongfully reported by the
 25 City or they should not be reported because they're not

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1 benefit eligible, correct?

2 A. Correct, for the same time period.

3 Q. Now, having set that aside for the moment. At
 4 the time you wrote the letter, you had made the decision
 5 based on the communication from Mr. Grapski and
 6 Mr. Little, you said you received a call from the FDLE?

7 A. Correct.

8 Q. Okay. Now, when you received the call from
 9 the FDLE, what you found out is that at that time --
 10 meaning as of June 29, 2007 -- he was still listed in
 11 law enforcement; is that correct?

12 A. Yes.

13 Q. So when you called over to find out from FDLE
 14 that he was still in law enforcement, you confirmed he
 15 was still in law enforcement, but you still -- without
 16 giving him a hearing or an opportunity to be heard --
 17 took away five years of benefits by one percent by
 18 putting him into another plan?

19 A. Correct.

20 Q. Okay. And for you that was just a, quote,
 21 plan code change?

22 A. Plan code change. One plan to another.
 23 Incorrect plan to the correct plan.

24 Q. Now, you're familiar -- not only familiar,
 25 you're an expert on the Florida Retirement System

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1 particularly the Employer Handbook. Are you familiar
 2 with the Florida Retirement Handbook that deals with a
 3 section -- Chapter 1, if you will -- that deals with
 4 local agencies?

5 A. Yes.

6 Q. Local agencies weren't always part of the
 7 plan, correct?

8 A. Part of --

9 Q. State Retirement Plan?

10 A. Part of the -- since the inception of the
 11 Florida Retirement System, local agencies have been a
 12 part of the plan.

13 Q. Let me rephrase it. I said it poorly. Local
 14 agencies may participate in state retirement and they
 15 may not?

16 A. Municipalities.

17 Q. Municipalities?

18 A. Yes.

19 Q. When you talk about local agencies, that will
 20 include municipalities?

21 A. Yes, and charter schools and --

22 Q. A wide range of groups that are not state?

23 A. Yes.

24 Q. And the Special Risk members' provision
 25 says -- that is provided to the employer -- says that --

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1 back to the statutes.

2 Q. But as it relates to this, at least, a local
 3 agency employee eligible for membership who's a member
 4 of Special Risk, if eligible, he may elect to transfer
 5 to SMSC or, if eligible, remain in the Special Risk
 6 Class or the Special Risk Administrative Support Class,
 7 correct?

8 A. That's what's worded there.

9 Q. Okay. And according to that which is provided
 10 to the employer -- actually the election under this
 11 language is that you are to elect to go into SMSC not
 12 Special Risk?

13 A. You lost me on that one, I'm sorry.

14 Q. Poor wording, but let me try it again. It
 15 says --

16 A. It would be helpful if I could --

17 Q. Yes. Let me bring it to you. I have an extra
 18 copy. I just happened to bring one.

19 MS. STEVENS: Rod, are you in the employer
 20 handbook?

21 I have that.

22 MR. SMITH: Section I, Florida Retirement
 23 System. I think we filed it. It's in evidence, by
 24 the way.

25 CHAIRPERSON MYERS: It is. We've got it.

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1 and I asked you about this, "Any local agency employee
 2 eligible for membership in the SMSC --" that's Senior
 3 Management Services, correct?

4 A. Correct.

5 Q. "-- who is a member of the state retirement
 6 Special Risk Class or the Special Risk Administrative
 7 Class may elect to transfer to the SMSC, withdraw at any
 8 time from the FRS altogether or, if eligible, remain in
 9 the Special Risk Class or Special Risk Administrative
 10 Support Class," correct?

11 A. Yes.

12 Q. Now, but your interpretation of that is that a
 13 city manager would never be eligible?

14 A. That's true. That is --

15 Q. But, if I could, that employer handbook is the
 16 one that's provided to the City, correct?

17 A. That is.

18 Q. Do you know under local agencies if it ever
 19 says that city managers are not persons who are
 20 eligible, or is that just implied because of the other
 21 statutory language and the other language in the
 22 handbook about these seven compulsory positions?

23 A. As worded, it does say "as eligible," and "as
 24 eligible" would, in this particular case -- that's why
 25 we have a disclaimer, when there's a discrepancy, we go

1 MS. STEVENS: What page?

2 MR. SMITH: I'm sorry. On this one, it's
 3 I-34. I think it's "I" 34 or I-34. I think I've
 4 highlighted it.

5 THE WITNESS: Okay.

6 BY MR. SMITH:

7 Q. What I'm saying here is this says, "Any local
 8 agency employee..." which you would agree local agency
 9 is a city, municipality, correct?

10 A. That's correct.

11 Q. "...eligible for membership in the Senior
 12 Management Services Class..."

13 You would agree that he's not only eligible,
 14 but according to your interpretation, he is a compulsory
 15 member of that plan?

16 A. He is a mandatory member of the Senior
 17 Management Service Class.

18 Q. "...and who is a member of the Special Risk
 19 Class..." which he plainly was in 2002, correct?

20 A. Yes, he was.

21 Q. "...may elect to transfer to SMSC, withdraw at
 22 any time from FRS altogether or, if eligible, remain in
 23 the Special Risk class or Special Risk Administrative
 24 Support Class." Correct?

25 A. That is what it says.

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1 Q. Now, under this -- is it a plausible
 2 interpretation that the election here is that you elect
 3 -- if you were a member of Special Risk, you may elect
 4 to go into the SMSC. If you don't exercise that, if
 5 eligible, you remain in the Special Risk Class, correct?
 6 A. No. It says "if eligible" at the top of the
 7 page.

8 Q. I understand what it says up there.

9 A. At top of the page --

10 MS. COCHEU: Let her finish her answer.

11 A. At the top of the page where it outlines
 12 special instructions for community colleges presidents,
 13 superintendents, county and city managers, being
 14 compulsory membership or mandatory membership, it says
 15 there that they must participate in the SMSC or withdraw
 16 from the FRS altogether. This is the overriding.

17 BY MR. SMITH:

18 Q. Again, I just want to be clear on this, you
 19 take the position that that language precludes in all
 20 instances those original, I think, seven positions,
 21 those seven positions that are compulsory members; that
 22 means anybody that is in those titles, they don't have
 23 to send information up and be cleared as eligible with
 24 the Commission, correct?

25 A. What seven positions?

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1 have to notify us of who's filling the position.

2 Q. Actually before that, though --

3 A. In a designated position.

4 Q. -- you have to agree that that position should
 5 be designated SMSC, correct?

6 A. That's correct.

7 Q. So as to assistant city manager versus city
 8 manager, the difference is you would have to agree that
 9 the assistant city manager was SMSC eligible?

10 A. Correct.

11 Q. But as to city manager, they are automatically
 12 SMSC eligible?

13 A. By statute.

14 Q. And you take the position that, however -- you
 15 go further and you say that that means that they -- no
 16 matter what system they are in, they can only withdraw
 17 or stay in that, even if they're Special Risk members?

18 A. Once they fill a position as city manager,
 19 they can be Compulsory Senior Management Service Class
 20 or they can withdraw.

21 Q. You were asked some questions about city
 22 managers, county administrators who are in the system as
 23 it relates to city manager, have you had a law
 24 enforcement officer in the Special Risk system or a -- I
 25 guess it could be also a firefighter in the Special Risk

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1 Q. I'm sorry. I thought it was seven. Maybe
 2 it's more.

3 Community college president, appointed
 4 district school superintendent, county manager, city
 5 manager, and there's actually a couple more that don't
 6 apply to local agencies. That would be university
 7 president -- there's seven of them, okay?

8 A. Yeah.

9 Q. My point is those positions that are listed as
 10 compulsory, they don't have to -- a city, a university,
 11 the state, if it's in one of those positions or a school
 12 district, you don't have to have those cleared for
 13 membership in the SMSCs because they are automatically
 14 in the SMSC?

15 A. They are mandatory positions.

16 Q. Now, as to the other positions that exist --
 17 and I'll use assistant city manager, although now I
 18 think you said you developed a little broader guideline
 19 but assistant city manager, maybe department chairman of
 20 the right kind -- or division chairman of the right
 21 department -- if a city, university, or other local
 22 agency wants that person to be in the SMSC eligible,
 23 they have to submit that for approval?

24 A. They have -- because the position is
 25 designated, once the person fills the position, they

1 system become a city manager?

2 A. I'm not aware of it.

3 Q. Have you had one become a county
 4 administrator?

5 A. Not that I'm aware of.

6 Q. My point is you were asked that there's nobody
 7 in that. The fact of the matter is, you don't know of
 8 any circumstance where anybody who became a county
 9 manager, city manager, or county administrator were ever
 10 in a Special Risk pension at the time they became
 11 administrator or manager?

12 A. The question I thought that I was answering is
 13 are there any city commissioners or county commissioners
 14 who are --

15 Q. You mean --

16 A. Excuse me. Any city managers or county
 17 managers reported as Special Risk.

18 Q. The answer is "No?"

19 A. None that we're aware of.

20 Q. Now, my question to you was one beyond that.
 21 Do you know of any circumstances in which a firefighter
 22 or a police officer, people who are plainly in a Special
 23 Risk plan or even someone in the Special Risk
 24 Administrative Support plan, do you know of any
 25 circumstance where that person has attempted or has ever

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1 become a city manager or county administrator?
 2 A. I'm not aware of it.
 3 Q. You were asked questions about the Special
 4 Risk classification that deals with Special Risk
 5 Administrative Support. It is your position, as I
 6 understand it, the Special Risk support requires you to
 7 remain in that same agency?

8 A. If you're in -- yeah, go ahead.
 9 Q. So if you are in a municipality and you become
 10 the assistant city manager in charge of -- the assistant
 11 city manager in charge of the police department with
 12 direct supervision, have you ever had that occur?

13 A. The assistant --

14 Q. A city manager assigned to -- some larger
 15 cities and municipalities have people that are assigned
 16 to one or more divisions.

17 A. But in order to be in the administrative
 18 support, you would have to be offering administrative
 19 support for the law enforcement unit, so you would still
 20 be in that unit or offering support for the firefighters
 21 or the police department, so you'd still be in the unit.

22 Q. And so that we're clear on this, have you ever
 23 had, prior to this, anyone who held the title of --
 24 under the circumstances of city manager/police
 25 commissioner?

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1 A. Not that I'm aware of.

2 Q. But when you reviewed the contracts, it was
 3 very clear in the contracts, was it not, that among the
 4 duties he was required to perform were duties directly
 5 involved in law enforcement including assigned to
 6 special investigations?

7 A. We asked for the police commissioner job
 8 description because we initially thought it was two
 9 positions since there was a slash between the city
 10 manager and slash police commissioner. But it's my
 11 understanding, through information coming back from the
 12 Mayor, that that was not a position. There was no
 13 salary, and there was no job description for that
 14 position.

15 Q. And again, to be clear, you had the contracts
 16 as the only thing you said you received that dealt
 17 directly with that issue? Under those contracts, it's
 18 clear he had assignments specifically narrowly drawn to
 19 the police department, did he not?

20 A. In the 2002 contract?

21 Q. The 2002 contract.

22 A. I'd have to go back and look at that.

23 Q. Okay.

24 A. I do not see where the 2002 contract shows
 25 that he's filling a law enforcement position.

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1 Q. If I may, I'll show you where it is.

2 A. Sure. This is 2002 because what we would have
 3 looked for is a law enforcement position.
 4 Q. Let me ask you this -- let me try a different
 5 way. You were aware that he was required to be
 6 certified -- as part of his contract, required to
 7 maintain his certification?

8 A. Yes.

9 Q. And you were aware that he was -- or you
 10 became aware at least that he was assigned and he
 11 actively was involved in the supervision of the police
 12 chief and other police officers, you knew that from the
 13 interim contract, and you knew it of the June 2007
 14 contract, didn't you?

15 A. We have his August -- the contract effective
 16 August 28.

17 Q. Of 2002?

18 A. Of 2002.

19 Q. Okay. I want to turn -- let me get the right
 20 number and make sure I give you the right contract.

21 A. What we would have looked for is a law
 22 enforcement position that supported the police
 23 commissioner title.

24 Q. I want to show you, if I may -- and I know you
 25 have these contracts. I want to show you the one that

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1 was entered June 18, 2007, do you have that contract?
 2 This would have been at a time -- June 18, 2007.

3 MS. STEVENS: I have all the contracts you
 4 gave me to date. What's the date on that?

5 MR. SMITH: June 18 is the date it bears.
 6 This would have been -- got to get to it first.

7 A. Was this for the interim?

8 BY MR. SMITH:

9 Q. No. This is 2007. This is right before you
 10 made your decision.

11 A. We did not have this -- we did not have a copy
 12 of this signed contract. We did not use this in our
 13 determination.

14 Q. And you did not use this in your determination
 15 even though it was the most recent contract?

16 A. We did not have a signed copy at the time we
 17 made the plan change.

18 Q. Did you ask --

19 A. We received one afterwards. We received it
 20 from, I believe, Mayor Cooper.

21 Q. Did you have any contracts before you made the
 22 plan changes?

23 A. Yes. '02, '03, '04 and '05.

24 Q. So at the time you made the plan change, you
 25 did not have the most recent contract which outlined his

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1 duties and responsibilities?

2 A. No.

3 Q. And if you would turn to Page 6 of that.

4 MS. STEVENS: Here you go. Thank you though.

5 BY MR. SMITH:

6 Q. In the June 2007 contract, dated June 18,
7 before this had occurred and before your decision was
8 made, the contract requires, as the others have, that he
9 remain a Certified Law Enforcement Officer, correct?

10 A. Yeah, I see that.

11 Q. That he shall remain, subject to reassignment
12 from his current position to another position,
13 qualifying for Special Risk within the City of Alachua?

14 A. Yes, I see that.

15 Q. And he has completed more than six years as a
16 member of the Special Risk Retirement Plan?

17 A. I see that.

18 Q. Okay. Now, you know from your experience and
19 expertise that at that point in time that language
20 appears to have been drafted with an eye towards meeting
21 the criteria for Special Risk Administrative Support?

22 A. I see that now. I did not have that at the
23 time I made the determination.

24 Q. But it wouldn't have made any difference to
25 you, would it, because you take the position that city

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1 manager is out?

2 A. City manager is mandatory Senior Management
3 Service Class.

4 Q. Okay. So do you know -- you talk about the
5 units. The City of Alachua, its progress has been that
6 it only reports one unit, is that correct, reports
7 everything as a single unit?

8 A. You report under one agency number as a single
9 unit.

10 Q. And just to be clear on this, your testimony
11 is you have the interim contract and the other contracts
12 up until June 2007 at the time you made the decision,
13 but you never contacted Mr. Watson regarding same; is
14 that right?

15 A. We were -- we did not -- we did not use this
16 contract to put Mr. Watson in the Senior Management
17 Service Class position. I believe we may have had an
18 unsigned, but that -- the 2002 going forward contracts.

19 Q. But when you did your review in June of 2007,
20 you did note the very high salary that had been paid in
21 his contract, correct, that was what led to that second
22 question, if you will?

23 A. Yes.

24 Q. Is it your testimony that for the five years
25 that he had been there you had -- no one in that

1 Department had ever noticed or reported to you that he
2 was reporting a salary by that time that had grown to
3 twice that of the Police Chief?

4 A. Oh, that may be where you're confused at. I'm
5 enrollment and eligibility. There's contribution and
6 payroll in another area.

7 Q. And they never reported that to you?

8 A. There would be no reason to report it to me.
9 If they thought it was unusual, they would verify with
10 the agency. If the agency said the salary was correct,
11 there would be no other --

12 Q. So even though I think at the time your
13 concern was that his salary and reported benefits had
14 risen to a level of about \$140,000 from about \$54,000
15 just four years before, which at that time would have
16 been twice the highest salary in the department, nobody
17 in the Division ever asked a question about it that you
18 know of?

19 A. No. In fact that wasn't really our concern.
20 Our concern was we were looking at a contract that said
21 80,000, and there was over a hundred thousand reported
22 during the same year the contract said 80,000.

23 Q. And just to finalize this and be clear, you
24 take the position that the election under -- of 90 days
25 of such appointment is not an election that Mr. Watson

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1 could have made anyway because it's your position that
2 doesn't apply to him?

3 A. Correct.

4 Q. If you have an employee who is moving into a
5 position where they normally are entitled to an
6 election, does the Division notify them of their right
7 of that election?

8 A. No.

9 Q. So how does the employee know they have a
10 right or a requirement to make in the election?

11 A. The employee usually will contact the Division
12 of Retirement when they take on a job or even before
13 they take on a job. Normally that's when we get our
14 calls before they even accept a position.

15 Q. Or, actually, the statute talks about that the
16 personnel department may forward that, correct?

17 A. Correct. The personnel Department may forward
18 it.

19 Q. So if at the time there was no personnel
20 department -- but again to you, that wouldn't make any
21 difference because your position is -- and the reason
22 for your decision -- I want to be clear on this -- the
23 reason of your decision is city manager is not eligible?

24 A. City manager is a compulsory position under
25 the Senior Management Service Class.

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1 MR. SMITH: Nothing further.
 2 MS. STEVENS: Commissioners, I'm sorry, I know
 3 you need to ask her questions but my other witness
 4 needs to leave at 6:00.

5 MS. GUSTAFSON: You have another witness?
 6 MS. STEVENS: One other witness. I don't have
 7 very many questions for him at all. Very brief. I
 8 know he needs to leave at 6, and it's ten till.
 9 It's just to get a quick point on, and he has been
 10 here since 1:00 waiting.

11 MS. COCHEU: Would you professionally proffer
 12 it first?

13 MR. SMITH: I may accept it.

14 MS. COCHEU: What is he going to testify to?
 15 MS. STEVENS: Terry Baker at FDLE. He's going
 16 to testify that Clovis Watson is not employed and
 17 has not been employed as a law enforcement officer
 18 since 2002; that his certification is in the
 19 special status, which requires him to associate
 20 with an agency only for mandatory retraining
 21 purposes -- just one moment; that he had been
 22 employed as a full-time law enforcement officer
 23 with FDLE until 2007.

24 I think these are things that --

25 MR. SMITH: I don't question any of those.

1 determine that their salary was correctly reported.
 2 Meaning that all of their wages that are eligible for
 3 retirement -- for retirement coverage are reported and
 4 not added to or padded salaries. Normally padded
 5 salaries would include car allowance, it would include
 6 education bonuses, it would include --

7 Q. Would you look at their classification, like
 8 their Special Risk designation, city manager or would
 9 you be looking for that?

10 A. We would certainly look at the agency head
 11 going to -- going out, we would always have the agency
 12 head in the sample; so if the agency head was Special
 13 Risk and it should have been Senior Management Service
 14 Class, yes.

15 Q. Did you audit the state retirement for the
 16 City of Alachua?

17 A. I did not audit the City of Alachua. I was in
 18 the enrollment area at that time --

19 Q. But did someone else?

20 A. -- when this came to my attention.

21 Q. Had anyone else audited?

22 A. I believe they had a desk audit where they
 23 supplied limited information. I'm thinking somewhere
 24 around '03.

25 Q. It didn't bring anything up in the audit --

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1 The only thing I want to add is this information
 2 was not known to the agency and this decision was
 3 not made until after he had been removed from -- he
 4 had been removed by virtue of the plan code change.

5 MS. STEVENS: Sure. I would agree with that.

6 MS. COCHEU: Take a minute and go release your
 7 guy.

8 (Pause.)

9 CHAIRPERSON MYERS: Do you have any questions
 10 Mr. Doster?

11 COMMISSIONER DOSTER: No.

12 CHAIRPERSON MYERS: Ms. Seay?

13 EXAMINATION

14 BY COMMISSIONER SEAY:

15 Q. Just one question, I think. When you audit
 16 local agencies for compliance, what would you typically
 17 do? Do you go out to the agency and look at their
 18 records?

19 A. We go out to the agency, look at payroll and
 20 personnel records. As an auditor, we would balance the
 21 payroll to determine how many members were reported for
 22 retirement, how many members were excluded. We look at
 23 all excluded members from retirement and verify through
 24 a sample that they were correctly excluded.

25 We would look at members who were reported and

1 A. The desk audit wouldn't have.

2 Q. -- to show --

3 A. It would not have been a full blown audit.
 4 With budget cuts, you don't get a chance to get out in
 5 the field and do everything.

6 Q. You said something about the agency would send
 7 in a position description and look at that position
 8 description to determine -- you have compulsory classes
 9 that --

10 A. For Senior Management, there are -- the
 11 legislature determines who's compulsory and who must be
 12 in there, and then the agency has up to 10 other
 13 positions to designate. And depending on the size of
 14 the agency, they can get another position per every 100
 15 employees.

16 So for an agency, such as Orange County School
 17 Board, Orange County School Board likes to designate
 18 their principals as Senior Management Service Class. We
 19 would need to have the job description to show that they
 20 are the principal --

21 Q. Only on those that are not compulsory?

22 A. Only on those that are not compulsory.

23 Q. City of Gretna, where you got people doing
 24 multiple roles, do you have to look at their position
 25 description to determine whether or not --

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1 A. -- they're eligible, yes.
 2 So the position has to be designated, and
 3 first we have to make sure the position is managerial;
 4 that it's policy making; and that it's not career
 5 service or it's not protected by civil service.
 6 Once the position is designated, then we
 7 verify the person who they want to report is actually
 8 filling that position, so it's a two-step process.
 9 And when that person leaves, then whoever
 10 comes into that position must be reported as Senior
 11 Management. If they're in that position, if they don't
 12 report them timely, then they're going to owe
 13 contributions to the Division of Retirement.
 14 So if they decide to report them in Regular
 15 Class, once we determine that is the class they should
 16 be in, we will automatically make those retroactive
 17 adjustments and bill the agency on the very next
 18 payroll.
 19 Q. So if you didn't -- if you didn't make those
 20 adjustments, you can go back until it was brought to
 21 your attention and go back and straighten that out
 22 somehow?
 23 A. Yes. Agencies --
 24 Q. Regardless of the impact --
 25 A. Yes. Agencies must report. If they have not

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1 at it. We'll examine whatever you have."
 2 But there was no job description. There was
 3 no position description. There was no separate duties.
 4 It was just a title.
 5 And then they tried to explain the -- I think
 6 he explained it was just a title so that -- and you have
 7 all of the letters going back and forth.
 8 Q. If my employer called me city manager,
 9 automatically -- regardless of what my duties happened
 10 to be, just by title of me as city manager, that would
 11 make me compulsory into the --
 12 A. Yes, it would, based on the statutes. We
 13 would go straight to the statutes. If you were an
 14 appointed superintendent, you're Senior Management
 15 Service Class mandatory straight by the statute.
 16 Q. So you go by class title?
 17 A. For those positions, because they're
 18 designated by law. That's an exception. That's a
 19 really big exception.
 20 If the legislature designates positions by
 21 title, then those particular titles must be Senior
 22 Management Service Class.
 23 Q. Unless a position description says otherwise,
 24 unless the position --
 25 A. No matter what the position description said.

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1 reported that person at all, we would automatically
 2 enroll the person and ask them to make the adjustments
 3 on the next payroll.
 4 But there is a penalty for not reporting
 5 people properly. That's one percent per month. So if
 6 you've left someone off your payroll that should be
 7 reported, immediately when you make that first
 8 adjustment, you are going to be billed one percent per
 9 month, and there's going to be penalty on top of that
 10 for every month --
 11 Q. That's for -- I guess I'm trying to, for this
 12 case, figure out if it's a city manager that has other
 13 duties, you need -- how do you --
 14 A. Now, we did ask to look at the other duties.
 15 We certainly asked for the position description, and we
 16 wanted to know was the police commissioner a Special
 17 Risk position, because maybe we could get him in on just
 18 the police commissioner and not the city manager.
 19 There is no position, police commissioner,
 20 that exists that does not have a salary; so Mayor
 21 Cooper explained that in his letter back to the
 22 Division, which is why there's back and forth saying,
 23 "Well, if it is, send us an application. Maybe it
 24 qualifies as Special Risk, and he's going to get in on
 25 the fact that he's filling two positions. Let's us look

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1 In this case, we were trying to do everything we could
 2 to understand was the person filling two positions,
 3 because we really thought the person was duly employed
 4 at some point because they kept saying, "No, he's a
 5 police commissioner," so maybe he was filling two
 6 positions: The City Manager and Police Commissioner.
 7 Q. You couldn't determine that because they
 8 couldn't give you a position description?
 9 A. Correct. So it's not a separate position.
 10 Q. Because they didn't have a position
 11 description?
 12 CHAIRPERSON MYERS: Separate salary either.
 13 Get one salary.
 14 A. There's no salary.
 15 BY COMMISSIONER SEAY:
 16 Q. His duties, not salary.
 17 A. So those are now the duties of the city
 18 manager is how we look at it.
 19 Q. Based on the title of the position?
 20 A. Right.
 21 Q. Not the duty of the position?
 22 A. Right. So what they're explaining in the
 23 contract and in the letters, the city manager has
 24 extended duties; so therefore the city manager is still
 25 Senior Management Service Class.

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1 Q. So the contract -- and I'll stop here -- the
 2 contract did not represent the duties and
 3 responsibilities of the position, even though there
 4 wasn't a position description, you couldn't look at the
 5 contract that the City had said, These are you're duties
 6 and responsibilities and determine from --

7 A. What we really wanted to look at is if we just
 8 looked at the Special Risk classification, was the
 9 person filling a separate Special Risk position in
 10 addition to city manager, and we couldn't find a
 11 separate position because there was a title, there was
 12 no salary --

13 Q. So that's the issue, there was not a separate
 14 position?

15 A. Right. We did -- we looked at every
 16 particular angle to see if there was any way that this
 17 person would be eligible for Special Risk.

18 EXAMINATION

19 BY CHAIRPERSON MYERS:

20 Q. I want to go back to audits. Do you do them
 21 automatically at certain times, or is this when you just
 22 see cause to go in?

23 A. Actually they're by county, and right now
 24 we're down to three auditors for over 900 agencies, so
 25 there's a --

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1 Q. From now until never?

2 A. Now until never, yes. So out of the audit
 3 department, it is down to three auditors.

4 Q. I just wondered. Really can't keep control
 5 then, huh?

6 A. Not really. We rely on the agencies; and then
 7 when there are issues, we just correct them, but we
 8 certainly do correct the errors. As soon as they're
 9 brought to our attention, we correct them. We don't
 10 wait months.

11 CHAIRPERSON MYERS: That's all I had. I
 12 wanted to check on that.

13 MS. STEVENS: Madame Chair, I had a couple
 14 follow-up questions. Just very quick follow-up
 15 questions.

16 REDIRECT EXAMINATION

17 BY MS. STEVENS:

18 Q. Ms. Morgan, do the Petitioner's duties as a
 19 City Manager matter in determining whether he's eligible
 20 for Special Risk -- or excuse me -- eligible for Senior
 21 Management Service Class?

22 A. No. The City Manager, since it is a position
 23 by law that is in the statutes and listed by law, then
 24 the City Manager would be Senior Management Service
 25 Class.

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1 Q. And, to your knowledge, are all City Managers
 2 Senior Management Service Class?

3 A. Yes.

4 Q. Mr. Smith referred to the handbook. I think
 5 you have a copy of that.

6 A. Yes.

7 Q. Do you have that?

8 A. I have the first chapter, yes, I do.

9 Q. What is the date of that handbook?

10 A. November 2008.

11 Q. Do you know whether this handbook had been
 12 revised since 2002?

13 A. Yes, many times.

14 Q. Mr. Smith referenced a certain section in that
 15 handbook. Do you know whether this particular section
 16 has been present since 2002?

17 A. I -- this particular section, the --

18 Q. The section?

19 A. What section did he reference?

20 Q. What page was that?

21 MR. SMITH: I think "I-34."

22 BY MS. STEVENS:

23 Q. Special Risk. That one. Do you know whether
 24 that has been present since 2002?

25 A. In this format, I'm not sure, no. I don't

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1 know.

2 Q. He also asked you questions about the June
 3 2007 contract. He said that when you made your initial
 4 determination to change the plan code, you did not have
 5 this contract. After you reviewed this contract, did
 6 that change your mind at all about whether he should
 7 have been placed in the Senior Management Service Class
 8 or remained in Special Risk?

9 A. No, no, it did not change my decision.

10 MS. STEVENS: I have no other questions.

11 CHAIRPERSON MYERS: Okay. We're through.

12 MR. SMITH: Yeah.

13 CHAIRPERSON MYERS: Rather than give oral
 14 closing, give written?

15 MR. SMITH: I've heard my closing. I'd rather
 16 write it.

17 COMMISSIONER DOSTER: That would be a good
 18 idea.

19 MR. SMITH: There's just so much material that
 20 has been covered.

21 COMMISSIONER DOSTER: We'll get a copy of the
 22 transcript, so that we can have it to review along
 23 with everything that we have so that we can make
 24 our deliberations, and we'll let you know if you
 25 want to be there, but you can send in your closing

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1 so that we can have copies of it.

2 MS. COCHEU: I guess the question is, do you
3 guys want copies of the transcript?

4 MR. SMITH: Yes.

5 MS. STEVENS: Yes.

6 MS. COCHEU: Then we need to know from the
7 court reporter how long that might take because
8 then we'll have to figure out how much time to
9 review the transcript and get your proposed orders
10 in; so if you can get those in so that we can make
11 copies and get to each one of the commissioners and
12 have time to review everything so we can know when
13 we can deliberate.

14 MS. STEVENS: If I may, I'm not used to this
15 format, I'm not used to writing the proposed
16 recommended order. When you said you wanted us to
17 submit closing, you mean -- you don't mean
18 something separate. I just have to clarify because
19 I don't want him sending in a closing and mine
20 being --

21 MS. COCHEU: He's going to do a video.

22 MS. STEVENS: 30 days from then; is that
23 reasonable?

24 MS. COCHEU: Fine from both you guys?

25 MR. SMITH: 30 days from receipt of the

1 CERTIFICATE OF REPORTER

2
3 I, AUDRA M. SMITH, do hereby certify that I
4 was authorized to and did report the foregoing
5 proceedings, and that the transcript, pages 1 through
6 218, is a true and correct record of my stenographic
7 notes.

8
9 Dated this 10TH day of June, 2009 at
10 Tallahassee, Leon County, Florida.

11
12 -----
13 AUDRA M. SMITH
14 Court Reporter

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1 transcript, we'll file with the Commission.

2 MS. COCHEU: Yes. Now, Marion, are you going
3 to file a separate one on behalf of --

4 MS. RUSH: We'll probably do it together, and
5 if there's any little things, we will designate it.
6 You'll just get one so you don't get three
7 different one.

8 MS. COCHEU: That was going to be the next
9 question, I didn't know if they wanted to read
10 three different ones, if you can incorporate it.

11 MS. RUSH: We'll try to incorporate it and
12 make it easier.

13 (The hearing was adjourned at 6:06 p.m.)

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